

AMENDED IN ASSEMBLY MARCH 3, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 155

Introduced by Assembly Member Charles Calderon

January 18, 2011

~~An act to amend Sections 6203 and 7055 of, and to add Section 6208 to, the Revenue and Taxation Code, relating to taxation. An act to amend Section 6203 of the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as amended, Charles Calderon. Use tax: ~~notification to purchasers;~~ retailer engaged in business.

Existing law imposes a sales tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, and a use tax on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, measured by sales price. That law requires every retailer engaged in business in this state, as defined, and making sales of tangible personal property for storage, use, or other consumption in this state to collect the tax from the purchaser. The commerce clause of the United States Constitution allows a state to compel a retailer to collect use tax if the retailer has a substantial nexus with the state.

This bill would define a retailer engaged in business in this state as a retailer that is a member of a commonly controlled group, as defined under the Corporation Tax Law, and a member of a combined reporting group, as defined, that includes another member of the retailer's commonly controlled group that, pursuant to an agreement with or in cooperation with the retailer, performs services in this state in

connection with tangible personal property to be sold by the retailer. This bill would also eliminate an exclusion.

~~This bill would revise the definition of “retailer engaged in business in this state” to mean any retailer that has a substantial nexus with this state for purposes of the commerce clause of the United States Constitution and any retailer upon which federal law permits this state to impose a use tax collection duty. The bill would also include specified retailers as retailers engaged in business in this state and would eliminate an exclusion.~~

~~This bill would also require each retailer that is not required to collect use tax to provide notification on its retail Internet Web site and any catalog that tax is imposed on the storage, use, or other consumption in this state of the tangible personal property purchased from the retailer and is required to be paid by the purchaser, as provided.~~

~~The Sales and Use Tax Law also authorizes, in administration of the use tax, the State Board of Equalization to require the filing of reports by any person or class of persons possessing or having custody of information relating to sales of tangible personal property the storage, use, or other consumption of which is subject to the use tax.~~

~~This bill would require every person not required to register with the board that sells tangible personal property the storage, use, or other consumption of which is subject to use tax to file a report with the board regarding those sales, as specified. The bill would also require those persons to annually send a notice to each purchaser showing the total amount of purchases made by that purchaser in the prior calendar year and informing the purchaser of the obligation to file the appropriate use tax returns, as prescribed. The bill would impose specified monetary penalties for failure to comply, while excluding from these requirements persons whose receipts from those sales do not exceed a specified amount.~~

~~This bill would provide that its provisions are severable.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 *SECTION 1. Section 6203 of the Revenue and Taxation Code*
2 *is amended to read:*

3 6203. (a) Except as provided by Sections 6292 and 6293, every
4 retailer engaged in business in this state and making sales of

1 tangible personal property for storage, use, or other consumption
2 in this state, not exempted under Chapter 3.5 (commencing with
3 Section 6271) or Chapter 4 (commencing with Section 6351),
4 shall, at the time of making the sales or, if the storage, use, or other
5 consumption of the tangible personal property is not then taxable
6 hereunder, at the time the storage, use, or other consumption
7 becomes taxable, collect the tax from the purchaser and give to
8 the purchaser a receipt therefor in the manner and form prescribed
9 by the board.

10 (b) As respects leases constituting sales of tangible personal
11 property, the tax shall be collected from the lessee at the time
12 amounts are paid by the lessee under the lease.

13 (c) "Retailer engaged in business in this state" as used in this
14 section and Section 6202 means and includes any of the following:

15 (1) Any retailer maintaining, occupying, or using, permanently
16 or temporarily, directly or indirectly, or through a subsidiary, or
17 agent, by whatever name called, an office, place of distribution,
18 sales or sample room or place, warehouse or storage place, or other
19 place of business.

20 (2) Any retailer having any representative, agent, salesperson,
21 canvasser, independent contractor, or solicitor operating in this
22 state under the authority of the retailer or its subsidiary for the
23 purpose of selling, delivering, installing, assembling, or the taking
24 of orders for any tangible personal property.

25 (3) *Any retailer that is a member of a commonly controlled*
26 *group, as defined in Section 25105, and is a member of a combined*
27 *reporting group, as defined in paragraph (3) of subdivision (b) of*
28 *Section 25106.5 of Title 18 of the California Code of Regulations,*
29 *that includes another member of the retailer's commonly controlled*
30 *group that, pursuant to an agreement with or in cooperation with*
31 *the retailer, performs services in this state in connection with*
32 *tangible personal property to be sold by the retailer, including,*
33 *but not limited to, design and development of tangible personal*
34 *property sold by the retailer; or the solicitation of sales of tangible*
35 *personal property on behalf of the retailer.*

36 ~~(3)~~

37 (4) As respects a lease, any retailer deriving rentals from a lease
38 of tangible personal property situated in this state.

39 ~~(4) (A) Any retailer soliciting orders for tangible personal~~
40 ~~property by mail if the solicitations are substantial and recurring~~

1 and if the retailer benefits from any banking, financing, debt
2 collection, telecommunication, or marketing activities occurring
3 in this state or benefits from the location in this state of authorized
4 installation, servicing, or repair facilities.

5 (B) This paragraph shall become operative upon the enactment
6 of any congressional act that authorizes states to compel the
7 collection of state sales and use taxes by out-of-state retailers.

8 (5) Notwithstanding Section 7262, a retailer specified in
9 paragraph (4) above, and not specified in paragraph (1), (2), or (3)
10 above, is a “retailer engaged in business in this state” for the
11 purposes of this part and Part 1.5 (commencing with Section 7200)
12 only.

13 (d) (1) For purposes of this section, “engaged in business in
14 this state” does not include the taking of orders from customers in
15 this state through a computer telecommunications network located
16 in this state which is not directly or indirectly owned by the retailer
17 when the orders result from the electronic display of products on
18 that same network. The exclusion provided by this subdivision
19 shall apply only to a computer telecommunications network that
20 consists substantially of online communications services other
21 than the displaying and taking of orders for products.

22 (2) This subdivision shall become inoperative upon the operative
23 date of provisions of a congressional act that authorize states to
24 compel the collection of state sales and use taxes by out-of-state
25 retailers.

26 (e) Except as provided in this subdivision, a retailer is not a
27 “retailer engaged in business in this state” under paragraph (2) of
28 subdivision (c) if that retailer’s sole physical presence in this state
29 is to engage in convention and trade show activities as described
30 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the
31 retailer, including any of his or her representatives, agents,
32 salespersons, canvassers, independent contractors, or solicitors,
33 does not engage in those convention and trade show activities for
34 more than 15 days, in whole or in part, in this state during any
35 12-month period and did not derive more than one hundred
36 thousand dollars (\$100,000) of net income from those activities
37 in this state during the prior calendar year. Notwithstanding the
38 preceding sentence, a retailer engaging in convention and trade
39 show activities, as described in Section 513(d)(3)(A) of the Internal
40 Revenue Code, is a “retailer engaged in business in this state,” and

1 is liable for collection of the applicable use tax, with respect to
2 any sale of tangible personal property occurring at the convention
3 and trade show activities and with respect to any sale of tangible
4 personal property made pursuant to an order taken at or during
5 those convention and trade show activities.

6 (f) Any limitations created by this section upon the definition
7 of “retailer engaged in business in this state” shall only apply for
8 purposes of tax liability under this code. Nothing in this section is
9 intended to affect or limit, in any way, civil liability or jurisdiction
10 under Section 410.10 of the Code of Civil Procedure.

11 ~~SECTION 1. Section 6203 of the Revenue and Taxation Code~~
12 ~~is amended to read:~~

13 ~~6203. (a) Except as provided by Sections 6292 and 6293, every~~
14 ~~retailer engaged in business in this state and making sales of~~
15 ~~tangible personal property for storage, use, or other consumption~~
16 ~~in this state, not exempted under Chapter 3.5 (commencing with~~
17 ~~Section 6271) or Chapter 4 (commencing with Section 6351),~~
18 ~~shall, at the time of making the sales or, if the storage, use, or other~~
19 ~~consumption of the tangible personal property is not then taxable~~
20 ~~hereunder, at the time the storage, use, or other consumption~~
21 ~~becomes taxable, collect the tax from the purchaser and give to~~
22 ~~the purchaser a receipt therefor in the manner and form prescribed~~
23 ~~by the board.~~

24 ~~(b) As respects leases constituting sales of tangible personal~~
25 ~~property, the tax shall be collected from the lessee at the time~~
26 ~~amounts are paid by the lessee under the lease.~~

27 ~~(c) “Retailer engaged in business in this state” as used in this~~
28 ~~section and Section 6202 means any retailer that has a substantial~~
29 ~~nexus with this state for purposes of the commerce clause of the~~
30 ~~United States Constitution and any retailer upon which federal law~~
31 ~~permits this state to impose a use tax collection duty. “Retailer~~
32 ~~engaged in business in this state” specifically includes, but is not~~
33 ~~limited to, any of the following:~~

34 ~~(1) Any retailer maintaining, occupying, or using, permanently~~
35 ~~or temporarily, directly or indirectly, or through a subsidiary, or~~
36 ~~agent, by whatever name called, an office, place of distribution,~~
37 ~~sales or sample room or place, warehouse or storage place, or other~~
38 ~~place of business.~~

39 ~~(2) Any retailer having any representative, agent, salesperson,~~
40 ~~canvasser, independent contractor, or solicitor operating in this~~

1 state under the authority of the retailer or its subsidiary for the
2 purpose of selling, delivering, installing, assembling, or the taking
3 of orders for any tangible personal property.

4 (3) Any retailer that is a member of a commonly controlled
5 group, as defined in Section 25105, and is a member of a combined
6 reporting group, as defined in paragraph (3) of subdivision (b) of
7 Section 25106.5 of Title 18 of the California Code of Regulations,
8 that includes another member of the retailer's commonly controlled
9 group that, pursuant to an agreement with or in cooperation with
10 the retailer, performs services in this state in connection with
11 tangible personal property to be sold by the retailer, including, but
12 not limited to, design and development of tangible personal
13 property sold by the retailer, or the solicitation of sales of tangible
14 personal property on behalf of the retailer.

15 (4) As respects a lease, any retailer deriving rentals from a lease
16 of tangible personal property situated in this state.

17 (d) Except as provided in this subdivision, a retailer is not a
18 "retailer engaged in business in this state" under paragraph (2) of
19 subdivision (c) if that retailer's sole physical presence in this state
20 is to engage in convention and trade show activities as described
21 in Section 513(d)(3)(A) of the Internal Revenue Code, and if the
22 retailer, including any of his or her representatives, agents,
23 salespersons, canvassers, independent contractors, or solicitors,
24 does not engage in those convention and trade show activities for
25 more than 15 days, in whole or in part, in this state during any
26 12-month period and did not derive more than one hundred
27 thousand dollars (\$100,000) of net income from those activities
28 in this state during the prior calendar year. Notwithstanding the
29 preceding sentence, a retailer engaging in convention and trade
30 show activities, as described in Section 513(d)(3)(A) of the Internal
31 Revenue Code, is a "retailer engaged in business in this state," and
32 is liable for collection of the applicable use tax, with respect to
33 any sale of tangible personal property occurring at the convention
34 and trade show activities and with respect to any sale of tangible
35 personal property made pursuant to an order taken at or during
36 those convention and trade show activities.

37 (e) Any limitations created by this section upon the definition
38 of "retailer engaged in business in this state" shall only apply for
39 purposes of tax liability under this code. Nothing in this section is

1 intended to affect or limit, in any way, civil liability or jurisdiction
2 under Section 410.10 of the Code of Civil Procedure.

3 ~~SEC. 2. Section 6208 is added to the Revenue and Taxation~~
4 ~~Code, to read:~~

5 ~~6208. Each retailer making sales of tangible personal property,~~
6 ~~the storage, use, or other consumption of which is subject to tax,~~
7 ~~that is not required to collect use tax, shall provide notice on its~~
8 ~~retail Internet Web site and any retail catalog that tax is imposed~~
9 ~~by this part on the storage, use, or other consumption in this state~~
10 ~~of the tangible personal property purchased from the retailer, the~~
11 ~~storage, use, or other consumption of which is not exempt from~~
12 ~~tax, and that tax is required to be paid by the purchaser. The~~
13 ~~notification shall be readily visible.~~

14 ~~SEC. 3. Section 7055 of the Revenue and Taxation Code is~~
15 ~~amended to read:~~

16 ~~7055. (a) In administration of the use tax, the board may~~
17 ~~require the filing of reports by any person or class of persons in~~
18 ~~possession or custody of information relating to sales of tangible~~
19 ~~personal property, the storage, use, or other consumption of which~~
20 ~~is subject to the tax. The reports shall be filed when the board~~
21 ~~requires and shall set forth the names and addresses of purchasers~~
22 ~~of the tangible personal property, the sales price of the property,~~
23 ~~the date of sale, and such other information as the board may~~
24 ~~require.~~

25 ~~(b) (1) Every person that sells tangible personal property, the~~
26 ~~storage, use, or other consumption of which is subject to use tax,~~
27 ~~that is not registered with the board, shall annually file with the~~
28 ~~board a report that sets forth the names and addresses of purchasers~~
29 ~~of the tangible personal property, the sales price of the property,~~
30 ~~the date of sale, and other relevant information as may be required~~
31 ~~by the board.~~

32 ~~(2) Paragraph (1) shall not apply to a person whose receipts~~
33 ~~from sales described in paragraph (1) are less than five hundred~~
34 ~~thousand dollars (\$500,000) in the prior calendar year, and are~~
35 ~~reasonably expected to be less than five hundred thousand dollars~~
36 ~~(\$500,000) in the current calendar year.~~

37 ~~(3) Each person required to comply with paragraph (1) shall be~~
38 ~~subject to a penalty of ten dollars (\$10) per violation for each name~~
39 ~~of a purchaser that was not included in the report for each annual~~
40 ~~period. If the board finds that a person's failure to comply with~~

1 paragraph (1) is due to reasonable cause and circumstances beyond
2 the person's control, and occurred notwithstanding the exercise of
3 ordinary care and the absence of willful neglect, the person shall
4 be relieved of the penalties provided in this paragraph.

5 (e) (1) Each person required to comply with paragraph (1) of
6 subdivision (b) shall annually send a notice to each purchaser
7 showing the total amount of purchases made by that purchaser in
8 the prior calendar year. The notice shall inform the purchaser of
9 the obligation to file the appropriate sales and use tax returns. The
10 notice shall be sent separately to each purchaser, by first-class
11 mail, with the following notice contained on the exterior of the
12 envelope: "Important Tax Document Enclosed."

13 (2) Each person required to comply with paragraph (1) shall be
14 subject to a penalty of ten dollars (\$10) per violation for each
15 purchaser to whom notice is not sent. If the board finds that a
16 person's failure to comply with paragraph (1) of this subdivision
17 is due to reasonable cause and circumstances beyond the person's
18 control, and occurred notwithstanding the exercise of ordinary
19 care and the absence of willful neglect, the person shall be relieved
20 of the penalties provided in this paragraph.

21 SEC. 4. The provisions of this bill are severable. If any
22 provision of this bill or its application is held invalid, that invalidity
23 shall not affect other provisions or applications that can be given
24 effect without the invalid provision or application.